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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
DAO, MINH D	
ART UNIT	**PAPER NUMBER**
2682	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/878,107	SHIRAI, KOUJI	
	Examiner	Art Unit	
	MINH D DAO	2682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 February 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) _____ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *08/26/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 3-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchison, iv et al. (US Patent 6,449,476) in view of Hoffman (US Patent 6,622,017) and further in view of Lizuka et al. (US 5,933,595).

Regarding claim 3, Hutchison teaches a portable telephone (see fig. 1, item 101; col. 3,lines 26-29) in which software features in the main program of the portable telephone can be corrected, the telephone comprising: a read only memory (see fig. 1, item 1 16) in which a main program for the portable telephone is stored', a volatile memory (see fig.1, item RAM 114. However, Hutchison fails to teach means for loading a patch into the volatile memory, the patch intended to be substituted for a portion of the main program which portion contains a bug. Hoffman, in an analogous art, teaches a means for loading a patch into the volatile memory, the patch intended to be substituted for a

portion of the main program which portion contains a bug (col. 6,lines 60-65). Therefore, it would have been obvious to one of ordinary skill in the ad at the time of the invention was made to provide the teaching of Hoffman to Hutchison in order to download a software patch for the existing module as suggested by Hoffman (col. 6,lines 63-65).

Still regarding claim 3, the combination of the teaching of Hutchison and Hoffman fails to teach means for copying the software features into the volatile memory to create a backup software to be stored in the read only memory. Lizuka teaches a way to copy software features into the volatile memory to create a backup software to be stored in the read only memory (col. 1, lines 62-67; col. 2, lines 1-11). Therefore, it would have been obvious to one of ordinary skill in the ad at the time of the invention was made to provide the teaching of Lizuka to Hutchison and Hoffman for the benefit of being able to rewrite the execution program which has a bug in it as suggested by Lizuka.

Regarding claim 4, the combination of the teachings of Hutchison, Hoffman and Lizuka teaches that the portable telephone of claim 3, further comprising means for replacing a portion of the main program which contains the bug with the backup patch (reference Hoffman, col. 6,lines 60-65).

Regarding claims 5 and 10, the combination of the teachings of Hutchison, Hoffman and Lizuka teaches means for replacing a portion of the main program which contains the bug with the backup patch (reference Hoffman, col. 6,lines 60-65), but the combination

fails to teach means for erasing the backup patch after it has replaced the portion of the main program which contained the bug. However, it is commonly known in the art that memory space of a mobile phone often needs to be available for additional storage. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to erase or delete the used backup patch software in order to yield more memory for future needs of the mobile phone.

Regarding claim 6, the combination of the teachings of Hutchison, Hoffman and Lizuka teaches the portable telephone of claim 3, wherein the main program stored in read only memory is stored in blocks (reference Hutchison, see fig. 2, item 1 16, col. 5,lines 36-42).

Regarding claim 7, the combination of the teachings of Hutchison, Hoffman and Lizuka teaches the portable telephone of claim 6, wherein the main program stored in read only memory, is rewritable in units of a block (reference Hutchison, see fig. 2, item 1 16, col. 5, lines 36-42).

Regarding claim 8, the claim has the same limitations as that of claim 1, therefore is interpreted and rejected for the same reason set forth in claim 1.

Regarding claim 9, the claim has the limitations as that of claim 1 ,and additionally discloses the limitation "periodically executing at least a portion of the main program" which the combination of the teachings of Hutchison, Hoffman and Lizuka fails to teach. However, it is obvious in the art that every time the mobile phone is turned on, at least a portion of the software of the unit is executed. Therefore, claim 9 is rejected for the same reason set forth in claim 1 and for the obviousness mentioned above.

Regarding claim 11, the combination of the teachings of Hutchison, Hoffman and Lizuka teaches the method according to claim 9, wherein the patch is transmitted to the portable telephone from a communications network (reference Hutchison, see fig. 1, items Programmer 122 and Communication Link 133).

Regarding claim 12, the combination of the teachings of Hutchison, Hoffman and Lizuka teaches the method according to claim 9, wherein the patch is transmitted to the portable telephone from a personal computer (reference Hutchison, see fig. 1, item 122; col. 4,lines 27-44).

Response to Arguments

1. Applicant's arguments filed on 02/09/2005 have been fully considered but they are not persuasive.

Regarding the remarks on pages 3 and 4, Applicant admits that Iizuka teaches transferring software data from a RAM to a ROM, and argues that Iizuka teaches away from the cited portion by stating that Iizuka teaches directly transferring the data from the external RAM to the internal ROM bypassing the internal RAM; and no patch is to be stored to the internal RAM; and therefore the combination of Hutchison, Hoffman, and Iizuka would not render the obviousness to reject independent claims 3, 8, and 9. Examiner would like to remind the Applicant that Examiner only relies on Iizuka for the teaching of transferring or copying data software from a RAM to a ROM for fixing a portion of the ROM regardless of where the ROM and RAM located. In addition, examiner also relies on Hoffman for the teaching of loading a patch into the volatile memory intended to be substituded for a portion of the main program that contains a bug. Therefore, Hutchison, Hoffman, and Iizuka once combined teaches the limitations of independent claims 3, 8, and 9.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH D DAO whose telephone number is 571-272-7851. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, VIVIAN C CHIN can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Minh Dao MDD
Art Unit 2682
April 6, 2005